IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

MFA.No. 395 of 2002(C)

AGAINST THE ORDER IN WCC.104/2001 DT.13.12.2001 OF COMMISSIONER FOR WORKMEN'S COMPENSATION, THRISSUR .

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APPELLANT: 2ND OPPOSITE PARTY

UNITED INDIA INSURANCE CO. LTD.,
THIRD PARTY CLAIMS CELL, VETTUKATTIL BUILDING,
M.G.ROAD, KOCHI-16, REPRESENTED BY THE
DEPUTY MANAGER.

BY ADV. SRI.M.S.PATTALI
SRI.T.VINOD KUMAR

RESPONDENTS: APPLICANTS AND 1ST OPPOSITE PARTY
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1. **USHA, W/O.LATE SIVADASAN,**
   (1ST APPLICANT), KADAVATH HOUSE,
   PANACHERI VILLAGE, PATTIKKAD, THRISSUR DISTRICT.

2. **MINOR NITHEESH, S/O.LATE SIVADASAN,**
   (2ND APPLICANT), DO. DO.

3. **MINOR NIMISHA, D/O.LATE SIVADASAN**
   (3RD APPLICANT), DO.DO.

4. **VENUGOPALAN(4TH APPLICANT), DO.DO.**

5. **JANAKI AMMA, W/O.VENUGOPALAN, DO.DO.**

6. **A.A.THOBIAS,(1ST OPPOSITE PARTY),**
   SILPI HARDWARE AND BUILDING MATERILS,
   PATTIKKAD P.O., THRISSUR DISTRICT.

BY ADV. SRI.N.P.SAMUEL - R1 TO R5

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A. NO.395/2002

ORDER ON CMP. NO.2157/2002 IN MFA. NO.395/2002

DISMISSED

28.05.2007

SD/- J.B.KOSHY, JUDGE
SD/- K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

tss

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.395 OF 2002

Dated 28th May, 2007

JUDGMENT

Koshy,J.

A registered headload worker working in the establishment of the sixth respondent (first respondent in the claim petition) sustained fatal injuries during the course of employment. He died leaving his young wife, two minor children and aged parents. AW1, wife of the deceased, deposed before the Commissioner that monthly income of the deceased was more than Rs.4,000/=. In the claim application also it is stated that the monthly income was Rs.4,000/=. Ext.A7 is the identity card to show that he was a headload worker permanently employed in the sixth respondent's establishment. The Commissioner assessed income at Rs.4,000/=. Taking the undisputed age of the deceased, the correct factor was taken and calculated compensation. The only ground taken by the insurance company in this appeal is that the Commissioner should not have taken Rs.4,000/= as the monthly wages. Since the deceased was a regular worker and even if Rs.150/= per day was taken as the income, the monthly income will be more than Rs.4,000/=. The accident occurred in 2001. Even considering the minimum wages for a manual worker in Kerala, Rs.4,000/- assessed by the Commissioner as monthly income is not high.

In any event, the assessment of monthly income by the Commissioner as Rs.4,000/= cannot be taken as a substantial question of law. Under Section 30 of the Workmens' Compensation Act, an appeal will not lie if there is no substantial question of law. Finding of the Commissioner that the deceased was getting Rs.4,000/= as monthly wages is only a finding of fact and we see no ground to interfere with the matter.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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